

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on  
 Universal Service

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CC Docket No. 96-45

FCC 01-31

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**REPLY COMMENTS OF THE SOUTHFIELD PUBLIC SCHOOLS, THE  
 HERRICK DISTRICT LIBRARY, THE CHELSEA DISTRICT LIBRARY, THE  
 SHIAWASSEE DISTRICT LIBRARY, THE BULLARD SANFORD MEMORIAL  
 LIBRARY, THE PLYMOUTH DISTRICT LIBRARY, THE FREMONT AREA  
 DISTRICT LIBRARY, AND WAYNE RESA**

The Southfield Public Schools, the Herrick District Library, the Chelsea District Library, the Shiawassee District Library, the Bullard Sanford Memorial Library, the Plymouth District Library, the Fremont Area District Library, and Wayne RESA, all public schools and libraries in the State of Michigan ("Michigan Schools & Libraries"), submit these reply comments in response to the opening comments filed in response to the Further Notice of Proposed Rulemaking ("FNPRM"), released January 23, 2001, concerning implementation of the Children's Internet Protection Act ("CHIP Act").

The Michigan Schools & Libraries agree with the points made in the opening comments of several other schools and libraries.<sup>1</sup> We are concerned, however, that

<sup>1</sup> E.g., Wyoming State Library comments; Manitowoc Public Library comments; Illinois State Library comments; TLN comments; Illinois State Board of Education comments; ALA comments; Oakland County Library comments; Livonia Public Library comments; Kalamazoo Public Library comments; Oakland Schools comments; Michigan Library Assn. comments.

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Mich. Schools & Libraries  
 February 22, 2001

opening commenters have failed to appreciate fully the scope of the problems posed by the proposed certification language. Specifically, the opening commenters' suggested changes to the certification language proposed in the FNPRM are insufficient: They do not prevent schools and libraries from having to choose between, on the one hand, making a certification that, due to technological limitations of filtering technology, is inherently inaccurate and, on the other hand, foregoing federal support for which they would otherwise be eligible. Indeed, based on current technology, the proposed certification language provides no choice at all. If schools and libraries want to be truthful, they must decline to certify and forfeit all federal support.

Although many commenters propose a “good faith” standard with regard to protecting against access to visual depictions referred to in the CHIP Act,<sup>2</sup> the simple truth is that *no* school district or public library is in a position to certify in good faith that it can or will obtain a “technology protection measure” that fully satisfies the requirements of the Act. Stated bluntly, no such technology exists. Furthermore, experts predict that such technology may never exist.

The CHIP Act defines a “technology protection measure” as “a specific technology that blocks or filters Internet access to” *visual depictions* that are “obscene,” “child pornography” or “harmful to minors”. “Child pornography” and “harmful to minors” are defined in sufficiently explicit terms that, *after the fact*, one could probably determine whether a specific technology protection measure has in fact blocked access to

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<sup>2</sup> E.g., N. Carolina Office of Information Technology comments; N. Carolina Dept. of Cultural Resources comments; Missouri Research and Education comments.

a particular visual depiction that is "harmful to minors" or "child pornography."<sup>3</sup> The problem is that, even a cursory testing of available filtering technology reveals that, *before the fact*, available technology cannot accomplish what the proposed certification language promises.

Research into available specific technology that blocks or filters Internet access to *any* defined material on the Internet reveals that there is no technology that blocks or filters access to visual depictions of these defined items. The March 2001 online Consumers Reports (<http://www.consumerreports.org/Special/ConsumerInterest/Reports/0130fil0.html>) describes the three basic methods by which software technology producers carry out blocking and filtering: (1) software analysis based on the presence of certain text words or the presence of images, or both; (2) human analysis; and (3) software disabling of sites based on whether they are labeled within certain ratings categories. As to software analysis, Consumer Reports noted that the majority of producers used a combination of text and images, and that the rest used text only. As to human analysis, Consumer Reports noted that humans could not possibly pre-review the entire universe of available material. (An article found at <http://www.prospect.org/V12/1/nunberg-g.html> points out that as of late 2000, the entire publicly accessible Web contained in the neighborhood of 1.5 billion pages, with

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<sup>3</sup> The definition of "harmful to minors" includes the definitions of "sexual act" and "sexual contact", which are defined in 18 U.S.C. §2246 to mean contact between female and male genitals, or the penis and any anus, mouth and genitals or anus, penetration of anal or genital openings by hands, fingers, objects, etc., with the intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, or the intentional touching, not through clothing, of the genitalia of a person who has not

2,000,000 pages being added daily.) As to site labeling, Consumer Reports noted that this type of filter or blocking software rendered browsing basically useless, since it blocked such conventional unrated sites as the White House, the U.S. Senate, the U. S. House of Representatives and the U.S. Supreme Court.

Only one software provider to date appears to have claimed that its filtering software has the ability to discriminate among visual depictions. This software is called "Exotrope BAIR Filtering System 3.2.1." The "BAIR" system does not rely solely on visual images to make distinctions, but on a combination of pre-determined suspect pages (based on textual content) and then on the presence of pixels identified as having "flesh tones". Independent reviews of this software have demonstrated, however, that the system's selection of the specific images to be blocked may be no better than random (2/3 of all photographic images), regardless whether the image is pornographic in content or merely a depiction of a face, or even of a boat or a scene in Yellowstone National Park. See <http://www.zdnet.com/products/stories/pipreviews/0,8827,195175,00/html> for a favorable description of BAIR; <http://peacefire.org/censorware/BAIR/> and <http://www.wired.com/news/technology/0,1282,36923,00.html> for unfavorable reviews.

In order that schools and libraries may be able to certify truthfully as to compliance with CHIP Act in light of existing technology, we would propose the following certification:

"I hereby certify that the applicant has in place an Internet safety policy and a policy of Internet safety for minors, as

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attained the age of 16 with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

described in 42 U.S.C. §254(h), and that the applicant has installed blocking or filtering software technology which, to the extent technologically feasible and commercially available, is intended to protect against access through computers connected to the Internet to visual depictions that are obscene, child pornography or, in the case of computers used by minors, harmful to minors, but that because no "technology protection measure" as defined in the CHIP Act is available, the applicant cannot assure that such blocking or filtering technology will necessarily successfully block visual depictions of prohibited materials."

If the certification that the FCC requires is to have any basis in reality, it must be qualified in this manner. Otherwise, due to technological limitations, the certification will be a sham. That would not be in the interests of schools, libraries or the public.

Respectfully submitted,



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Dated: February 22, 2001

WALIB:89844.2\085199-00009